

USDC SDNY
DOCUMENT
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DATE FILED: 10/2/13

C/o

CHIEF JUDGE PRESKA
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF -
NEW YORK, 500 PEARL ST
Room 230 NEW YORK N.Y. 10007

OCT - 2 2013

OPPOSITION
MOTION

RE: BANKS V. CAPTAIN WALDEN

11 CIV-5738

SEPTEMBER 27-2013

1#. PLAINTIFF BANKS HEREBY PRO-SE RECITE STATEMENTS
BRIEFLY RENDERED BY CHIEF JUDGE PRESKA WITHIN
HER MEMO ENDORSEMENT LETTER HEREIN ENTERED ON THE
- 22 DAY OF MARCH 2013, SETTING FORTH A BRIEFING
SCHEDULE FOR DEFENDANT'S MOTION TO DISMISS.

2#. IT APPEARS HOWEVER THAT NEITHER PARTY WAS SERVED
WITH THAT ORDER ACCORDINGLY (TO ENABLE THE DEFENDANT -
TO FILE HIS MOTION TO DISMISS), THE COURT ENTERS THE
FOLLOWING REVISED BRIEFING SCHEDULE:

3#. DEFENDANT'S MOTION TO DISMISS SHALL BE DUE BY -
SEPTEMBER 16TH 2013

4#. PLAINTIFF OPPOSITION SHALL BE DUE BY OCTOBER 15TH 2013.

5#. DEFENDANT'S REPLY IF ANY SHALL BE DUE BY
NOVEMBER 1ST 2013.

6# PLAINTIFF Banks CALLS THE COURT ATTENTION TO THE DEFENDANT - CAPTAIN WALDEN DEFENSE COUNSEL MICHAEL A. CARDZOZO PRELIMINARY STATEMENT'S ENTERED ON THE 16TH DAY OF SEPTEMBER 2013 RELATING TO DISMISS OF PLAINTIFF Banks - COMPLAINT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(B)(6) FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN - BE GRANTED IN PLAINTIFF Banks COMPLAINT THAT WAS ACKNOWLEDGED BY THE DEFENSE COUNSEL MICHAEL A. CARDZOZO SINCE THE 5TH DAY OF AUGUST 2011 AS HE CONFIRMED WITHIN HIS PRELIMINARY STATEMENTS.

7# PLAINTIFF Banks CONTENTS THAT THE DEFENSE COUNSEL - - MICHAEL A. CARDZOZO FAILED TO RESPOND TO PLAINTIFF Banks COMPLAINT WITHIN THE 21 DAYS AS PERSCRIBE BY THE LAW OF THE FEDERAL RULE OF CIVIL PROCEDURE 12A(2) OR (3), AS WELL - - ALSO HE FAILED TO REQUEST FOR AN EXTENTION FOR DELAYING HIS RESPONSE IN ANSWERING TO PLAINTIFF Banks COMPLAINT AFTER THE AFOREMENTIONED ABOVE TIME EXPIRATION DATE , OF THE - - COMPLAINT.

8# FOLLOWING THE VIOLATION HEREIN IS CLEAR AGAINST THE DEFENSE COUNSEL MICHAEL A. CARDZOZO FILING MOTION TO DISMISS PLAINTIFF Banks COMPLAINT TWO (2) YEARS LATER VIOLATES THE LAW OF THE FEDERAL RULE OF CIVIL PROCEDURE 12A(2) OR(3) COMPLETELY. DESPITE HAVING CHIEF JUDGE PRESKA REVISED AN AFOREMENTIONED ORDER DATE FOR THE DEFENDANT TO FILE FOR THEIR DISMISSAL.

9# THEREFORE THE DEFENDANT CAPTAIN WALDEN -
- DEFENSE COUNSEL MICHAEL A. CARDODO Reply
MOTION ENTERED ON THE 16TH DAY OF SEPTEMBER
2013, REGARDING TO DISMISS PLAINTIFF BANKS
COMPLAINT MUST BE DENIED FOR HIS INITIAL
DEFAULT TO ANSWER THE COMPLAINT WITHIN THE
21 DAYS AS PESCRIBED BY THE LAW OF THE FEDERAL
RULE OF CIVIL PROCEDURE 12A (2) OR (3), AND THEREOF
GRANTING PLAINTIFF BANKS RELIEF AS HE REQUEST
RESPECTFULLY HEREIN, AS THE COURT MAY SEEM
JUST AND PROPER.

SINCERLY
cc: Deshaun Banks #12A0406

VERIFICATION

STATE OF NEW YORK)
)ss:
COUNTY OF CHEMUNG)

I, Deshawn Banks, being duly sworn, state:

I am the Petitioner in this action. I have read, and I am familiar with, the contents of the
~~OPPOSITION MOTION~~ 11CIV-5738
foregoing [REDACTED] Application for [REDACTED] #, Verified Petition, Affidavit in Support of Petition, Order
to Show Cause, Affidavit in Support of Order to Show Cause, [REDACTED]
~~OPPOSITION MOTION~~
Support of [REDACTED] Papers, Verification, Affidavit of Service and the content thereof is true
to my own knowledge, except as to matters therein stated on information and belief and as to
those matters I believe them to be true.

Dated: 9-27 2013
Chemung County, New York

Respectfully Submitted,

Deshawn Banks
Petitioner, Pro-Se
Din. # 12A0406
Southport Correctional Facility
236 Bob Masia Dr., P.O. Box 2000
Pine City, N.Y. 14871-2000

Sworn to and subscribed before me this
27 day of Sept, 2013
Pat

Notary Public

PATRICIA A. KLATT
Notary Public, State of New York
Chemung County No. 01KL6001416
Commission Expires Jan. 12, 2014

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
COUNTY OF CHEMUNG) ss:

I, Deshawn Banks, being duly sworn, deposes and says, that I am the Petitioner herein, and that on the date of notarization indicated below, I have placed in a sealed, post-paid, wrapper a true and exact copy of the enclosed papers, Identified as: Order to Show Cause, Affidavit in Support of Order to Show Cause, Opposition Motion, Affidavit in Support of Petition, Verification, Affidavit in Support of Petition, and Affidavit of Service, by placing same in U.S. Mailbox in Southport Correctional Facility for delivery to the United States Postal Service, and that such parcels were addressed to the parties indicated below:

Respectfully Submitted,

Deshawn Banks, Petitioner, Pro-Se
Din. # 12A0406
Southport Correctional Facility
236 Bob Masia Dr., P.O. Box 2000
Pine City, N.Y. 14871-2000

C/o
MICHAEL A. CARDZOZO
[REDACTED]
[REDACTED]

CC:

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NEW YORK 10007

CC:
CHIEF JUDGE PRESKA
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF
NEW YORK U.S. COURT HOUSE

500 - PEARL STREET
Room 230 NEW YORK
NEW YORK 10007

Sworn and subscribed to before me

on this 27 day of Sept, 2013

KLatt
Notary Public

PATRICIA A. KLATT
Notary Public, State of New York
Chemung County No. 01KL6001416
Commission Expires Jan. 12,

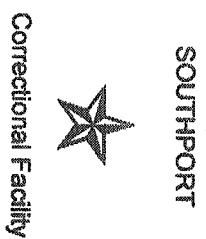
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SOUTHPORT CORRECTIONAL FACILITY

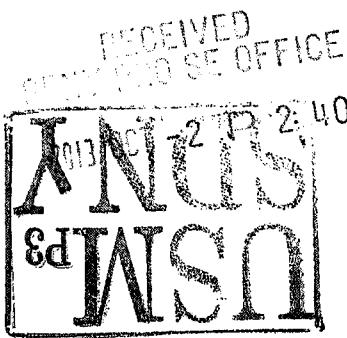
P.O. BOX 2000

PINE CITY, NEW YORK 14871-2000

NAME: DESHAWN BANKS DIN: 12A046



C/o



LEGAL MAIL:

HONORABLE: CHIEF PRESKA
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK U.S. COURT
-
HOUSE 500 PEARL ST Room 230
NEW YORK, NEW YORK 10007